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8	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
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11	In the Matter of the Accusation Against:	Case No. 2010-329			
12	JOHN FRANCIS GAULE	ACCUSATION			
13	AKA RICHARD BROTHER GAULE 1232 Carlsbad Pl.				
14	Ventura, CA 93003				
15	Registered Nurse License No. 383146				
16	Respondent.				
17	Complainant alleges:				
18	PARTIES				
19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her				
20	official capacity as the Interim Executive Officer of the Board of Registered Nursing, Departmen				
21	of Consumer Affairs.				
22	2. On or about January 1, 1985, the Board of Registered Nursing (Board) issued				
23	Registered Nurse License No. 383146 to John Francis Gaule, also known as Richard Brother				
24	Gaule (Respondent). The Registered Nurse License was in full force and effect at all times				
25	relevant to the charges brought herein and will expire on July 31, 2010, unless renewed.				
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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 490 states:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."
 - 5. Section 726 states, in relevant part:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3."

6. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."
- 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare."

COST RECOVERY

10. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

11. Respondent is subject to disciplinary action under section 2761, subdivision (f) and 490, as defined in California Code of Regulations, title 16, section 1444, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a registered nurse. On or about April 9, 2007, after pleading guilty, Respondent was convicted of

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one misdemeanor count of violating Penal Code section 243.4, subdivision (e)(1) [sexual battery] in the criminal proceeding entitled *The People of the State of California v. John Francis Gaule* (Super. Ct. Ventura County, 2007, No. 2007008945). The court sentenced Respondent to ten days in Ventura County Jail and placed him on probation for three years, with terms and conditions. The circumstances surrounding the conviction are that on or about March 2, 2007, Respondent willfully and unlawfully touched an intimate part of Jason M., against his will for the purpose of sexual arousal, sexual gratification, and sexual abuse.

SECOND CAUSE FOR DISCIPLINE

(Sexual Misconduct with a Patient)

12. Respondent is subject to disciplinary action under section 2761, subdivision (a), for violating section 726, in that on or about March 2, 2007, while employed as a registered nurse at Community Memorial Hospital, in Ventura, CA, Respondent inappropriately touched the private part of Jason M. when bathing him. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

- 1. Revoking or suspending Registered Nurse License No. 383146, issued to Respondent;
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED:	,	13	10	
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LOUISE R. BAILEY, M.ED., RN

Interim Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

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